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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 247

PASQUALE ALBANESE, *Appellant*,

v.

GRACE EVELYN PIERCE, ET AL., *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

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Appellees' motion to dismiss requires only a brief response.

1. The facts in the present case are, of course, not before this Court. Nonetheless appellees' Statement of Case so far departs from the record that it warrants correction.

The jury in this case was required to decide, in addition to the issues involving appellant, two negligence questions: (1) Whether appellees were entitled to recover in their action against Floyd F. Gilleo, the driver of one of the cars and the person to whom appellant was alleged to have sold two beers while intoxicated;

and (2) whether Floyd F. Gilleo and his nephew Floyd H. Gilleo, a passenger in his car, were entitled to recover in their action against appellees. The jury returned verdicts for the defendant in *both* causes of action. Appellant argued below, without success, that these two verdicts meant that *neither* Floyd F. Gilleo nor appellees were negligent, and hence that appellant could not be held liable. The Supreme Court of Errors, however, rejected the contention, pointing out that the verdicts could all be reconciled on the assumption that *both* Floyd F. Gilleo *and appellees* were negligent. Pet. App., p. 14a. In the light of the jury verdicts, and the reconciliation of them by the court below, the Statement of Case can only be described as highly misleading. It is not without significance that it makes no reference whatever to the record.

2. On the merits, appellees make no contention except that in any case dealing with intoxicating liquor the Constitution is to be, in effect, ignored. That the police power of the States is broad appellant does not deny, nor does he deny that it is especially broad in the area of regulation of alcoholic beverages. Certainly, however, no decision of this Court sanctions the view that one who deals in alcoholic beverages forfeits all constitutional rights. *Ziffrin* v. *Reeves*, 308 U.S. 132 and *Crane* v. *Campbell*, 245 U.S. 304, both cited by appellees, explicitly upheld the liquor regulating provisions involved therein on the ground that they were "reasonably appropriate" (245 U.S. at 307) or "clearly appropriate" and "not unreasonable" (308 U.S. at 139) exercises of the admitted legislative power to regulate. *Eiger* v. *Garrity*, 246 U.S. 97, also cited by appellees, held that a state could constitutionally make one who knowingly leases his premises for the

sale of intoxicating liquor liable for a judgment against the lessee. The *Eiger* opinion contains nothing to support appellees' statement that the lessor "contended that the liability sought to be imposed upon him was not connected with any delict on his part" (Motion, pp. 6-7). On the contrary, the opinion explicitly states that the lessor's contentions related to lack of notice and opportunity to be heard in the suit against the lessee (246 at 103). There is nothing in the cases cited by appellees, or in any case that we have been able to find, to support the contention that a dealer in intoxicating beverages may be held liable for private injuries not causally related to the acts or omissions of the person held liable.

We need express no opinion on the validity of appellees' assertion (Motion, p. 7) that Connecticut could have "determined that anyone who sells liquor to an intoxicated person thereby endangers the welfare and safety of the community." That is the language of *criminal*, not tort, liability, and *United States* v. *Carolene Products Co.*, 304 U.S. 144, upon which appellees rely, is a *criminal* case. Patently, as we have already shown (Jur. St. pp. 13-14), the decision below in this case cannot be sustained as a criminal penalty.

Respectfully submitted,

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